

**IN THE SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL APPELLATE JURISDICTION)**

Present:

**Mr. Justice Md. Shohrwardi**

**Criminal Appeal No. 1521 of 2020**

Md. Monaem Hossain @ Md.  
Mounayem Hossain

.....Appellant

-Vs-

The State and another

....respondents

Mr. Abdullah Al Rasel, Advocate

....For the appellant

Mr. Farhad Hossain Siddique,  
Advocate

.....For the respondent No.2

**Heard on 01.06.2023, 15.12.2024,**

**08.01.2025**

**Judgment delivered on: 09.01.2025**

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 30.09.2019 passed by the Additional Sessions Judge and Dewlia Bishoyok Adalat, Dhaka in Session Case No. 2017 of 2018 arising out of C.R. Case No. 275 of 2018 convicting the petitioner under section 138 of the Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 01(one) year and to pay a fine of Tk. 7,30,000.

The prosecution case, in short, is that the accused Md. Monaem Hossain, Proprietor of Aru Enterprise, took loan of Tk. 730,000 from the complainant Md. A. Khaleque who is the Proprietor of the Ms ZK Enterprise. The accused issued cheque No. 2502286 on 01.01.2018 in favour of the complainant. The complainant presented the said cheque on 02.01.2018 for encashment through Bangladesh Krishi Bank, Savar Branch, Dhaka and on the same date the said cheque was dishonoured and the bank issued the dishonour slip. Thereafter, the complainant informed the matter to the accused who requested the complainant to present the said cheque on 14.01.2018 which was again dishonoured on the same date. The complainant again informed the accused about the dishonour of the cheque and the accused lastly requested the complainant to present the said cheque on 12.03.2018. Accordingly, the complainant presented the said cheque on 12.03.2018 which was dishonoured with the remark “insufficient funds”. The complainant sent legal notice on 15.03.2018 through registered post with AD to the accused but he did not pay the cheque amount. Consequently, he filed the case.

After filing the complaint petition the learned Magistrate by order dated 23.07.2018 took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 and thereafter the accused obtained bail. The case record was transmitted to the Sessions Judge, Dhaka and the case was registered as Sessions Case No. 2017 of 2018. The learned Sessions Judge, Dhaka by order dated 23.07.2018 sent the case

to the Additional Sessions Judge and Dewlia Bishoyok Adalat, Dhaka for trial and disposal of the case. During the trial, charge was framed against the accused under section 138 of the Negotiable Instruments Act, 1881 which was read over and explained to the accused present in court and he pleaded not guilty to the charge and claimed to be tried following the law.

The prosecution examined 01(one) witness to prove the charge against the accused and the defence cross-examined P.W.1. After examination of the prosecution witness, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and the accused declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which the accused filed the instant appeal.

P.W. 1 Md. A. Khaleque is the complainant. He stated that the accused Md. Monayem Hossain was previously known to him and he took a loan of Tk. 730,000 from him. The accused issued a cheque on 01.01.2018 drawn on his account maintained with Social Islami Bank, Uttara Branch for payment of Tk. 730,000 in his favour. He presented the said cheque on 12.03.2018 for encashment which was dishonoured with the remarks “insufficient fund”. On 15.03.2018 he sent legal notice to the accused and he received the legal notice on 19.03.2018 but he did not pay the cheque amount. Consequently, he filed the case on 16.04.2018. He proved the complaint petition as exhibit-1 and his signature on the complaint petition as exhibit-

1/1. He proved the cheque as exhibit-2, the dishonour slip as exhibit-3, and the legal notice and AD as exhibit-4 series. During cross-examination, he stated that he could not remember the date of issuance of the legal notice and the date of return of the AD. He denied the suggestion that a security cheque was issued.

The learned Advocate Mr. Abdullah Al Rasel appearing on behalf of the accused Md. Monaem Hossain submits that the accused issued the cheque in favour of the complainant but due to hardship, he could not pay the cheque amount after receipt of the notice sent under clause (b) to section 138 of the Negotiable Instruments Act, 1881. He also submits that both the complainant and the accused settled the dispute between them out of court and paid 50% of the remaining cheque amount on 08.11.2023 in cash to the complainant and he prayed for setting aside the impugned judgment and order passed by the trial court accepting the compromise made between the parties on 08.11.2023.

The learned Advocate Mr. Farhad Hossain Siddique appearing on behalf of the complainant respondent No. 2 submits that the accused issued the cheque in favour of the complainant on 01.01.2018 and the same was dishonoured on 14.03.2018 and complying with all the procedures provided in section 138 of the Negotiable Instruments Act, 1881 filed the case and the prosecution proved the charge against the accused beyond all reasonable doubt. However, he submits that both the

complainant and the accused Md. Monaem Hossain @ Md. Mounayem Hossain settled the dispute between them and he received 50% of the cheque amount from the accused. He also prayed for acceptance of the compromise made between the parties.

I have considered the submission of the learned Advocate Mr. Abdullah Al Rasel who appeared on behalf of the appellant and the learned Advocate Mr. Farhad Hossain Siddique who appeared on behalf of complainant respondent No. 2, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that both the complainant and the accused Md. Monaem Hossain filed a joint application for compromise sworn on 08.11.2023 stating that the accused paid 50% of the cheque amount in cash to the complainant and he also received the same and the complainant is willing to withdraw 50% of the remaining cheque amount deposited by the accused before filing of the appeal. The compromise dated 08.11.2023 is annexed as annexure I.

The Negotiable Instruments Act, 1881 is a special law and the offence under section 138 of the said Act is not compoundable. Therefore, the parties are not entitled to settle the dispute out of court. After filing a case under section 138 of the said Act, the Court shall dispose of the case considering the merit of the case. There is no scope to dispose of the case considering the compromise made between the parties.

On perusal of the records, it appears that the accused Md. Monaem Hossain issued cheque No. 2502286 dated 01.01.2018 (exhibit-2) in favour of the complainant drawn on his account No. 0013300010328 maintained with Social Islami Bank Ltd, Savar Branch, Dhaka for payment of Tk. 730,000. The complainant presented the cheque for encashment and the same was dishonoured on 12.03.2018 with a remark, “insufficient funds” and accordingly the bank issued a dishonour slip on 12.03.2018 (exhibit-3). After that, the complainant sent legal notice on 15.03.2018 to the accused Md. Monaem Hossain through registered post with AD. The complaint petition was proved as exhibit-1, the cheque as exhibit-2, the dishonour slip as exhibit-3, and the legal notice and AD as exhibit-4 series.

The legal notice was received by the accused on 19.03.2018 but he did not pay the cheque amount. Consequently, the complainant filed the case complying with all the procedures provided in section 138 of the Negotiable Instruments Act, 1881. The above evidence depicts that the accused Md. Monaem Hossain committed an offence under section 138 of the Negotiable Instruments Act, 1881 and the complainant by adducing legal evidence proved the charge against the accused beyond all reasonable doubt.

There is a presumption under section 118(a) of the Negotiable Instruments Act, 1881 that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed,

negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption under Section 118 (a) is rebuttable. The accused failed to rebut the said presumption by cross-examining P.W. 1. Furthermore, the accused admitted that he issued the cheque in favour of the complainant and paid Tk. 365,000 out of the cheque amount i.e. Tk. 730,000. Therefore, I am of the view that the accused Md. Monaem Hossain issued the cheque in favour of the payee-complainant for consideration. The cheque was dishonoured for insufficient funds. After service of notice on 19.03.2018, the convict petitioner did not pay the cheque amount and thereby he committed an offence under Section 138 of the Negotiable Instruments Act, 1881. The prosecution proved the charge against the convict petitioner beyond all reasonable doubt and the Courts below on proper assessment and evaluation of evidence legally passed the impugned judgment and order of conviction.

Considering the gravity of the offence and the facts and circumstances of the case, I am of the view that the ends of justice would be best served if the sentence passed by the trial court is modified as under;

The convict-petitioner Md. Moneam Hossain @ Md. Mounayem Hossain is found guilty of the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to pay a fine of Tk. 730,000.

It is admitted by the complainant respondent No. 2 that he received 50% of the cheque amount. Therefore, he is entitled to get 50% of the remaining cheque amount deposited by the accused before filing the appeal.

The trial court is directed to allow the complainant respondent No. 2 to withdraw 50% of the cheque amount deposited by the accused before filing the appeal within 15 days from the date of filling application, if any.

The appeal is disposed of with modification of the sentence.

However, there will be no order as to costs.

Send down the lower Court's records at once.